The Mortgage Reform and Anti-Predatory Lending Act of 2007

Section-by-Section Summary

TITLE I—MORTGAGE ORIGINATION

Sec. 101. Definitions.

Establishes definitions for various terms, including: "mortgage originator," "qualified nationwide registration regime," "qualifying state licensing law," "residential mortgage loan," and "securitizer."

Sec. 102. Residential mortgage loan origination.

Provides that all mortgage originators (including mortgage brokers and depository institutions that originate mortgages) will be subject to a federal duty of care that requires (1) licensing and registration under State or Federal law, (2) diligently working to present consumers with a range of residential mortgage loan products appropriate to the consumer's existing circumstances, (3) making full, complete, and timely disclosures to consumers, (4) certifying to creditors compliance with mortgage origination requirements under this section, and (5) including in all loan documents the unique identifier of the mortgage originator provided by the qualified nationwide registration regime. This subsection expressly does not create an agent or fiduciary relationship, but mortgage originators are free to become an agent or a fiduciary if they so desire. HUD, OCC, OTS, and FDIC, in consultation with FTC, will jointly prescribe regulations to further define the federal duty of care.

Sec. 103. Anti-steering.

Provides that no mortgage originator can receive, and no person can pay, any incentive compensation (including yield spread premiums) that is based on or varies with the terms of a mortgage loan. HUD, OCC OTS, and FDIC, in consultation with FTC, will jointly prescribe regulations to prohibit mortgage originators from steering any consumer to a mortgage loan that is not in the consumer's interest (such as a loan with predatory characteristics), and will seek to ensure that such regulations meet the conditions set forth in the legislation. However, nothing in this subsection should be construed as limiting the ability of a mortgage originator to sell residential mortgage loans to subsequent purchasers, or restricting a consumer's ability to finance origination fees if they were disclosed to the consumer and do not vary with the consumer's decision to finance such fees.

Sec. 104. Licensing and registration of mortgage originators.

Requires all mortgage originators to be licensed and registered pursuant to qualifying State licensing law or an equivalent Federal banking regime. If States do not pass qualifying laws that meet the standards set forth in the bill, then HUD will promulgate regulations requiring mortgage brokers in such States to act "solely in the best interest" of the consumer. States will have two years from the date of enactment of this Act to pass qualifying State licensing laws, and HUD will have the authority to extend this deadline by six months for individual States acting in good faith.

Sec. 105. Enforcement.

Provides that a cause of action will exist under section 130(a) and 130(b) of TILA for a mortgage originator's failure to comply with this section. The maximum liability of a mortgage originator for violation of this section will not exceed three times the total amount of mortgage originator fees, plus the consumer's costs including reasonable attorney's fees.

Sec. 106. Regulations.

Except for the 24-month period (and possible 6-month extension) set forth in section 104 regarding HUD licensing and registration regime, regulations under this title will be promulgated within 12 months of the enactment of this Act, and take effect no later than 18 months after the enactment.

TITLE II—MINIMUM STANDARDS FOR ALL MORTGAGES

Sec. 201. Ability to repay.

Provides that no creditor may make a residential mortgage loan unless the creditor makes a reasonable and good faith determination based on verified and documented information that, at the time the loan is consummated, the consumer has a reasonable ability to repay the loan (including all applicable taxes, insurance, and assessments). OCC, OTS, and FDIC, in consultation with FTC, will jointly prescribe regulations regarding this provision. A determination of ability to repay will be based on the consumer's credit history, current income, expected income the consumer is reasonably assured or receiving, current obligations, debt-to-income ratio, employment status, and other financial resources other than the consumer's equity in the real property securing the loan. In making such a determination for nonstandard loans (adjustable rate loans, interest-only loans, and negative amortization loans), creditors will follow additional guidance as set forth in the legislation. To calculate monthly payments for principal and interest, creditors will make certain assumptions set forth in the legislation (including that the interest rate is a fixed rate equal to the fully indexed rate at the time of the loan closing).

Sec. 202. Net tangible benefit for refinancing of residential mortgage loans.

Provides that no creditor may extend credit for refinancing unless the creditor reasonably and in good faith determines, at the time the loan is consummated and on the basis of information known by or provided in good faith to the creditor, that the refinanced loan will provide a net tangible benefit to the consumer. The refinanced loan will not be considered to provide net tangible benefit if the costs of the loan, including points, fees, and other charges, exceed the amount of newly advanced principal. OCC, OTS, and FDIC, in consultation with FTC, will jointly prescribe regulations further defining the term "net tangible benefit."

Sec. 203. Safe harbor and rebuttable presumption.

Creditors and assignees may make the presumption that the minimum standards (reasonable ability to repay and net tangible benefit) are met for "qualified mortgages" and "qualified safe harbor mortgages." This presumption may be rebutted only against creditors and only if the loan is a qualified safe harbor mortgage. Qualified mortgages are prime loans with APRs that are not equal to or greater than 3% over comparable Treasuries and 175 basis points over the Federal Reserve H.15 rate for first lien loans, and 5% over comparable Treasuries and

375 basis points over the Federal Reserve H.15 rate for non-first lien loans. Qualified safe harbor mortgages are loans with (1) documented consumer income, (2) underwriting process based on fully indexed rate (and taking into account taxes and insurance), (3) debt-to-income ratio not greater than 50% or some other percentage prescribed by regulation, (4) no negative amortization, (5) other requirements that may be established by regulation, AND (6) one of the following: (i) fixed payment for at least 7 years, or (ii) for adjustable-rate loans, APR that varies less than 3% over the interest-rate index. OCC, OTS, and FDIC will jointly prescribe regulations to carry out the purposes of this subsection and may make changes to these safeharbor provisions over time as products and lending practices evolve.

Sec. 204. Securitizer liability.

For loans that violate the minimum standards for reasonable ability to repay and net tangible benefits as set forth by regulation, a consumer has an individual cause of action against assignees, including securitizers, for rescission of the loan and the consumer's costs. An assignee/securitizer will not be liable for a loan that violates the minimum standards if the assignee/securitizer: (1) provides a cure to make the loan conform to the minimum standards within 90 days of receiving notice from the consumer, or (2) (a) has a policy against buying mortgage loans that are not qualified mortgages or qualified safe harbor mortgages and exercises reasonable due diligence to adhere to such policy through a adequate, thorough, and consistently applied sampling procedure in accordance with regulations that OCC, OTS, and FDIC will jointly prescribe and (b) has obtained representations and warranties from the seller or assignor of the loan regarding not selling or assigning loans that violate the minimum standards and takes reasonable steps to obtain the benefit of such representations or warranties. Liability will not apply to pools of loans or investors in pools of loans.

Sec. 205. Defense to foreclosure.

A consumer who has the right of rescission may exercise such right when judicial or non-judicial foreclosure is initiated, and a third party may sell or assign a residential mortgage loan to an assignee, including a securitizer, to effect a rescission or a cure.

Sec. 206. Additional standards and requirements.

Prepayment Penalties: Prohibits prepayment penalties on "subprime" loans (loans that are not qualified mortgages as defined in section 203), and requires that all remaining prepayment penalties expire three months before a loan resets.

Renters in Foreclosure: In case of foreclosure, any successor in interest will take over the property subject to any bona fide lease made to bona fide tenant entered into before the notice of foreclosure. Bona fide tenants without a lease will receive at least a 90-day notice before being required to vacate.

Other Provisions: Prohibits single-premium credit insurance and mandatory arbitration. Requires securitizers to reserve the right in any document or contract establishing pools of loans to obtain access to such loans and to provide for and obtain a remedy under this title.

Sec. 207. Amendment to provision governing correction of errors.

Permits creditors to correct non-bona fide errors within 30 days of the loan closing and prior to the institution of any action. Permits creditors to correct bona fide errors within 60 days of the creditors' discovery or receipt of notification and prior to the institution of any action. A creditor may correct an error by making the loan satisfy the applicable requirements of TILA (including requirements of this Act) or changing the terms of the loan so the loan is no longer a high-cost mortgage.

Sec. 208. Amendment relating to right of rescission.

Provides that a person is not barred from asserting a right of rescission after the expiration of the statute of limitation as a defense to a foreclosure action.

Sec. 209. Amendments to civil liability provisions.

Doubles the amount of civil liability penalty currently applicable under TILA. Extends the statute of limitations from one year to three years.

Sec. 210. Rule of construction.

Except as otherwise expressly provided, no provisions of the new sections 129A and 129B added by this Act will be construed as superseding, repealing, or affecting any duty, right, obligation, privilege, or remedy of any person under any other provision of TILA.

Sec. 211. Regulations.

Regulations under this title will be promulgated within 12 months of the enactment of this Act, and take effect no later than 18 months after the enactment.

TITLE III—HIGH-COST MORTGAGES

Sec. 301. Definitions Relating to High-Cost Mortgages.

Expands the scope of HOEPA to also cover purchase money loans and open-end loans. Codifies the existing Federal Reserve standard for the APR trigger which is set at 8% above comparable Treasury securities for first mortgages and Treasuries plus 10% for subordinate mortgages. Lowers the points and fee triggers from 8% to 5% for most loans. Establishes a third trigger for loans with prepayment penalties that exceed 2% or 30 months duration. Expands the definition of points and fees to include all compensation paid directly or indirectly by a consumer or creditor to a mortgage broker from any source (including table-funded transactions), certain insurance premiums, prepayment penalty charges under the loan, and prepayment penalties actually charged in a refinance by the original lender or the original lender's affiliate. Excludes certain bona fide discount points and prepayment penalties (up to 2 points for near-market interest rate loans) from the determination of the amount of points and fees that trigger HOEPA protections.

Sec. 302. **Amendments to Existing Requirements for Certain Mortgages**.

Prohibits prepayment penalties on HOEPA loans with principal amounts below the FHA loan limit for a given geographical area. Prohibits balloon payments on high-cost loans unless the payment schedule is adjusted to the seasonal or irregular income of the consumer. Provides additional high-cost loan "ability to repay" protections. Creditors are allowed to consider a number of factors including current and expected income, current obligations, and employment status (rebuttable presumption of ability to repay provided that the consumer's total monthly debts do not exceed 50% of monthly gross income).

Sec. 303. **Additional Requirement for Certain Mortgages**.

Prohibits creditors from (1) encouraging that borrowers default on an existing loan when refinancing such existing debt with a high-cost mortgage, (2) charging multiple late fees on the same delinquent payment and caps any give late fee at 4%, (3) unilaterally accelerating the loan, (4) directly or indirectly financing points and fees for high-cost mortgages (the restriction applies to prepayment penalties if the lender or an affiliate is the noteholder of the loan being refinanced), (5) structuring loans to evade HOEPA protections, and (6) making a high-cost loan to a consumer unless the creditor has received a certification that the borrower received pre-loan counseling from a HUD-approved entity. Prohibits modification or deferral fees unless they can be proven beneficial to the consumer. Requires that creditors and servicers disclose and provide free access to payoff amounts.

Sec. 304. **Regulations**.

Requires the Federal Reserve Board to implement regulations under this title within six months of enactment.